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NO.

in the
Supreme Court
of the
United States

October Term, 1980

THE STATE OF FLORIDA,
Petitioner,

vs.

DAMASCO VINCENTE RODRIGUEZ,
Respondent.

On Petition for a Writ of Certiorari
to the District Court of Appeal
of Florida, Third District

BRIEF OF PETITIONER ON JURISDICTION

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QUESTION PRESENTED

WHETHER THE DECISION OF THE FLORIDA COURTS, CONSTRUING THE FOURTH AND FIFTH AMENDMENTS AS APPLIED TO THE STATES THROUGH THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION HOLDING: 1) THAT A POLICEMAN HAS LESS OF A RIGHT THAN THE GENERAL PUBLIC TO APPROACH PERSONS ON THE STREET; 2) THAT THE FACTS HEREIN, THEREFORE, CONSTITUTE A STOP AND FURTHER THE FACTS DO NOT AMOUNT TO ARTICULABLE SUSPICION AND 3) THAT THE CONSENT TO OPEN THE DEFENDANT'S LUGGAGE WAS ILLEGAL BECAUSE HE WAS NOT WARNED HE HAD A RIGHT TO REFUSE THE SEARCH, IS IN DIRECT AND SUBSTANTIAL CONFLICT WITH THE RULE OF THIS COURT IN *UNITED STATES v. MENDENHALL, U.S.*, 100 S.Ct. 1870 (1980); *SCHNECKLOTH v. BUSTAMONTE*, 412 U.S. 218 (1973) AND *TERRY v. OHIO*, 392 U.S. 1 (1968)?

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PREFACE

The Petitioner, THE STATE OF FLORIDA, was the Appellant in the District Court of Appeal of Florida, Third District, and the prosecution in the Florida trial court. The Respondent, DAMASCO VINCENTE RODRIGUEZ, was the Appellee in the Florida District Court and the defendant in the trial court. In this brief, the parties will be referred to as they appeared in the Florida trial court below.

The following references are made in this brief:

(A) For the portions of the record below sufficient to show jurisdiction in this court, which are contained in the Petitioner's Appendix and consist of page A1-A69.

I.

OPINIONS BELOW

The opinion of the District Court of Appeal of Florida, Third District, affirming the Florida trial court's granting of the Defendant's Motion to Suppress has been stayed pending an appeal to this Court. The Florida District Court opinion will be reported in *Southern Reporter Second Series* (West 1981). The opinion of the Florida District Court is contained in the State's Appendix at A64., There is no official reporter for citation to this opinion.

II.

JURISDICTION

On October 27, 1980, the District Court of Appeal of Florida, Third District, denied the State's Petition for Rehearing. The Florida District Court, however, stayed its mandate for sixty (60) days pending an appeal to this Honorable Court. The jurisdiction of this Court is invoked under the provisions of Title 28, United States Code, §1257(3) and Amendments IV, V and XIV of the United States Constitution.

The interpretation of the Florida Constitution and the United States Constitution are identical for purposes of the application of the criminal law and search and seizure issues. *Hetland v. State*, 366 So.2d 831 (Fla. 2d DCA 1979), *approved and adopted, Hetland v. State*, 387 So.2d 963 (Fla. 1980). The Florida District Court *per curiam* opinion, makes the Florida District Court the Court of last resort herein as a matter of law. *See, Dodi Publishing Co. v. Editorial America S.A.*, 385 So.2d 1369 (Fla. 1980); *Jenkins v. State*, 385 So.2d 1356 (Fla. 1980).

III.

CONSTITUTION AND STATUTORY PROVISIONS

Amendment IV of the Constitution of the United States provides that:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Amendment V of the Constitution of the United States provides *inter alia* that:

> "[No person] shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law . . ."

Amendment XIV of the Constitution of the United States provides that:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

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IV.

STATEMENT OF THE CASE

The Defendant, Damasco Vincente Rodriguez, was charged by information with possession of cocaine with intent to distribute arising out of his attempt on September 12, 1978, to transport three (3) pounds of cocaine contained in his luggage, through Miami International Airport, Miami, Florida. The Defendant

filed two Motions to Suppress in which the Defendant claimed his Fourth, Fifth and Fourteenth Amendment rights under the United States Constitution were violated. *See*, A2-A6. After an evidentiary hearing, the Florida trial court granted the Defendant's motions. A62-63.

At the hearing upon the Motion to Suppress, the only witness who testified was Officer Charles McGee of the Dade County Public Safety Department. A9. McGee related that he first saw the Defendant at 12:40 P.M. on September 12, 1978, at National Airlines ticket counter. A10. The Defendant was standing in line with a soft vinyl suitcase and a gold plastic suitbag with zippers which were padlocked shut. A22. Officer McGee observed that the Defendant did not buy a ticket but instead trailed two other individuals, subsequently known as Ramirez and Blanco. A24. Ramirez had purchased a ticket with a large roll of cash. A23. Ramirez upon purchasing a ticket walked over to Blanco and whispered to Blanco, who then walked by the Defendant and whispered to him. A24-A27. As Ramirez walked out of the ticket area past the Defendant and Blanco, he did not look at them. A26.

As Ramirez reached the end of the roped-off ticket purchasing area, Blanco left the ticket line and walked out behind Ramirez. A26. Blanco then looked quickly from side to side as well as behind him and the Defendant left the ticket line and followed behind Ramirez and Blanco. A26. During that time, neither Blanco nor the defendant conducted a transaction at the ticket counter. A27. Officer McGee and his partner, Facchiano, then followed the three men to the National Airline's departure area where they proceeded onto an escalator. A28. On the escalator, Ramirez and Blanco were standing side-

by-side, the Defendant was directly behind them, and McGee and his partner were four steps further back. A28. While on the escalator, Blanco and Ramirez conversed between themselves but not with the Defendant. A29. At the top of the escalator, as Blanco looked back toward the Defendant, he made eye contact with McGee. A29. Blanco then turned quickly back to Ramirez and spoke briefly with him and Ramirez then quickly looked back at the officers. A30. As the three men stepped off the escalator, Blanco turned and said to the Defendant, "Let's get out of here." A31. The Defendant then stopped and Blanco repeated "in a much lower and strained voice, 'Get out of here.'" A32.

At this point, the Defendant then turned, with suitcases still in hand, and looked directly at McGee. A32. The Defendant immediately started moving in a very hurried fashion to his left. A32. McGee described the Defendant's actions in the following manner:

> "THE WITNESS: He was moving in a direction to the left. His legs were pumping up and down very fast and not covering much ground, but the legs were as if the person were running in place. You might say moving slightly to the left. There's a wall or partition there. He ran through that partition and in the area just enclosed off.
>
> THE COURT: Did he run or walk?
>
> THE WITNESS: Neither. He was pumping up and down.

THE COURT: You said he ran up a minute ago. Did he go from a walk to pumping to a run?

THE WITNESS: Well, Your Honor, I don't know what the right word would be, but his feet are running up and down but he ain't going nowhere except a little at a time.

Do you understand what I'm saying?

BY MS. COHAN:

Q. Detective McGee, can you come down from the witness stand and show us?

THE COURT: Like running in place?

THE WITNESS: Sort of like this (indicating).

To demonstrate, he was standing with his suitcase and shoulder bag when the guy told him in a strained tone to get out of here. He turned and looked at me. He was going like that. He didn't know what to do. He was just going crazy. His feet was going up and down and he was moving, but —

THE COURT: All right. Have a seat."
A33.

The Defendant's comical attempt to flee the officers continued thus:

"[THE WITNESS]: After Mr. Rodriguez moved to the left to that position where the wall was, he started to go around it looking into that area. There is no exit, just walls. He then turned and came back out and passed me again still in the same pumping fashion and went to the other side of the escalator to my right. I am standing there just watching the guy running around in circles.

THE COURT" Maybe that's the way he walks.

THE WITNESS: He ran to the right and went that way. He ran back and got right in front of me. He looked at me square in the face. He said, 'Oh, shit.' "

A34.

While the Defendant was engaged in this activity, Blanco and Ramirez were standing off to the side. A36. When the Defendant passed by Blanco for the second time, Blanco told the Defendant to "go check the bag." A36. The Defendant then stopped in front of Officer McGee and said, "Oh, shit." A37. McGee then identified himself and asked if he could speak to the Defendant for a moment and the Defendant said, yes, sir." A39. McGee then asked if the Defendant would mind walking over to where his friends were with the other officer and the Defendant turned and proceeded the short distance. A40-A44.

After the Defendant rejoined the other two men, McGee asked if he had any identification and an airline ticket. A44. While the Defendant said that he had

none, Ramirez handed McGee a National Airlines ticket to LaGuardia in the names of Martinez, Perez and Rodriguez. A44. A discussion then ensued during which both the Defendant and Blanco stated that they were Rodriguez. A44. After the discussions concerning identification, McGee and his partner indicated that they were narcotics officers who were assigned to seek to combat the problem of drug trafficking through the airport. A46. After this advisement, the following ensued:

> I made some statement to Mr. Rodriguez about the display of his movements upon coming off of the escalator. I advised him that it caused me some concern from my observations and I asked him at that time, "So would you have any objection if I searched your luggage?"
>
> He said, "I don't."
>
> The suitcase was down on the floor. I am pointing down to the suitcase. He says, "I don't have a key."
>
> Before I could say anything else, Ramirez was watching me at that point and Ramirez said to Rodriguez, "Let him look."
>
> Rodriguez reached in his pocket and extracted a key. It was loose. It wasn't on a key chain or anything. He handed me a key which I placed in the lock and opened it.
>
> Q Did you demand that Mr. Rodriguez consent to search of his luggage?

A No, ma'am. I asked him if he had any objections. He said, "I don't have a key."

Q Did you tell him anything such as he didn't have a choice in the matter?

A No, ma'am."

A51-52.

McGee took the key, opened the suitcase, and found three-and-one half pounds of cocaine. A53. The Defendant was then arrested and handcuffed. A54. Prior to the discovery of the cocaine, the Defendant was free to leave. A55. After the Defendant was advised of his Miranda rights, he stated, "It's my dope. I am not going to get those other guys involved." A57.

The only evidence presented below was the unrebutted testimony of Officer McGee. Upon the foregoing facts the prosecutor argued in vain that the transaction was a mere contact within the meaning of *United States v. Wylie*, 569 F.2d 62 (D.C. Cir. 1977), and *Terry v. Ohio*, 392 U.S. 1 (1968) and that the Defendant's consent was valid under *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973). A58-A60. Upon the testimony of Officer McGee, the Florida trial court made three (3) distinct rulings. First, during the hearing, with respect to the approach by the officers, the trial court opined, thus:

"MS. COHAN: Your honor, this officer as a police officer has no less right to go up and engage a citizen in voluntary conversation than does a Hare Krishna.

THE COURT: I think he does have less right because his work and his duties and responsibilities and what he is attempting to do are entirely different than that of an ordinary citizen.

MS. COHAN: Not at all.

THE COURT: Well, I disagree with you. Go ahead. I am not going to permit that answer, anyway."

MS. COHAN: Your Honor is apparently taking the position that he has less right than a normal citizen. The State does not take that position and I would also at this point object to not being able to inquire as to those matters.

THE COURT: It's in the record."

A18-A20.

Subsequently, with regard to the bizarre activity of the Defendant; the whispering and apparently furtive relationship of the three men, the trial court made its position clear:

"THE COURT: I could rule at this point there was no reason to stop this man and for the sake of argument. I am not determining as a matter of fact at this point, but for the sake of argument I could say it was an illegal stop and there was no probable cause for an articulable fact or reasonable founded suspicion to stop this man, but that still doesn't visciate

necessarily what occurred thereafter. So, let's go from that point."

A49.

Finally, with respect to the Defendant's consent to search the bag, the trial court granted the Defendant's Motions to Suppress holding that:

> "THE COURT: I am going to grant the motion for this reason: I do not think that there has been a sufficient showing by the State that the consent was completely untainted and freely and voluntarily given; that the defendant was never told that he had the right to leave. He was never told that. He had the right to refuse to have his baggage searched and that he never verbalized a consent to the search of his luggage. I do not believe that the intervening statement by a companion to let him look is sufficient in the time frame that occurred here to overcome the taint of the lack of showing that his man had a right to refuse the search of his luggage or he had a right to leave, and therefore under the totality of the circumstances, I am going to grant the motion."

A60-A61.

Apparently, under the Florida trial court's view, the State is charged with not only the conduct of its officers, but must also be responsible for remarks of co-defendants. The trial court's written order similarly provides as a matter of law relying upon the United States Constitution that:

"1. There was no reason to stop the Defendant, Damasco Vincente Rodriguez. The Defendant did nothing which would arouse an articulable suspicion in the eyes of Detective McGee and Detective Facchiano.

"2. Due to the lack of telling the Defendant he had a right to leave, and the lack of telling the Defendant he had a right to refuse to consent to a search, there was an insufficient showing that the consent herein was completely untainted due to the lack of the two things previously mentioned.

"3. The statement made by the Defendant's companion did not overcome the taint from the initial illegal stop of the Defendant."

A62-A63.

On appeal to the District Court of Appeal of Florida, Third District, the State specifically relied upon this court's recent decision in *United States v. Mendenhall*, _____ *U.S.* _____, *100 S.Ct. 1870 (1980). A64. The Florida District Court disposed of all issues summarily holding that:*

"PER CURIAM.

"Affirmed on the authority of State v. Battleman, 374 So.2d 66 (Fla. 3d DCA 1979)."

A65.

The State filed a petition for rehearing, which was subsequently denied. A66-A69. The mandate of the

Florida District Court has been stayed pending appeal to this Court. A70.

V.

SUMMARY OF ARGUMENT

The decision of the Florida courts, construing the Fourth and Fifth Amendments of the United States Constitution holding: 1) that a a policeman has less of a right than the general public to approach persons on the street; 2) that the facts herein, therefore, constitute a stop and further the facts do not amount to articulable suspicion and 3) that the consent to open the Defendant's luggage was illegal because he was not warned he had a right to refuse the search, is in direct and substantial conflict with the rule of this Court in *United States v. Mendenhall*, _ U.S. _, 100 S.Ct. 1870 (1980); *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973) and *Terry v. Ohio*, 392 U.S. 1 (1968). In view of this Court's recent decisions in *Mendenhall* and *Reid v. Georgia*, ___ U.S. ___, 100 S.Ct. 2752 (1980) leaving the present issues in a state of some confusion, this Honorable court should correct this gross mis-construction of the United States Constitution.

VI.

ARGUMENT

The decision of the Florida Courts cannot be reconciled with the decisions of this Court in *United States v. Mendenhall*, ___ U.S. ___, 100 S.Ct. 1870 (1980); *Terry v. Ohio*, 392 U.S. 1 (1968) and *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973). The State submits

that in the circumstances of the case at bar, the initial transaction herein was not prohibited by the Fourth and fourteenth Amendments but was a mere "contact" between a police officer in a position that he had a right to be in and a citizen on the street. Alternatively, the circumstances herein clearly established articulable suspicion as a matter of law. *See, Draper v. United States*, 358 U.S. 307 (1959). Under *Terry v. Ohio, supra*, and its progeny, a police officer may approach a citizen for three separate reasons: 1) arrest; 2) stop and investigation and 3) mere contact. *See, e.g., United States v. Wylie*, 569 F.2d 62 (D.C. Cir. 1977); *Carpenter v. Sigler*, 419 F.2d 169 (8th Cir. 1969); *Wilson v. Porter*, 361 F.2d 412 (9th Cir. 1966); *see also, United States v. Mendenhall.* The predicate for each of these categories is different; as are the consequences. In order to justify an arrest, there must exist probable cause to believe that a crime has been committed and that the defendant committed it. In order to justify a *stop and detention*, the police must be able to articulate an objective, reasonable basis for belief that a crime has been, will be, or is currently being committed. *Terry v. Ohio, supra.* Such a stop gives the police the power to detain a citizen against his will for the limited purpose of investigation. The third form of approach, a mere *contact*, is directly applicable in the case at bar, and consists of simple common sense. *See, Terry v. Ohio, United States v. Mendenhall; United States v. Wylie.* In a mere *contact* the officer may not detain a citizen at all. He has only a common right to engage in voluntary conversation and if the citizen does not wish to respond, he need not, and may simply walk away. *See, e.g., United States v. Wylie*, at 67. This natural, common sense conclusion is predicated upon the fact that ordinary threshhold discourse between police officers and citizens on the

street is not cause for constitutional alarm. *Terry v. Ohio; United States v. Mendenhall.*

In *Terry v. Ohio,* the court, through Justice Warren, stated the applicable standards herein thus:

> "It does not follow that because an officer may lawfully arrest a person only when he is apprised of facts sufficient to warrant a belief that the person has committed or is committing a crime, the officer is equally unjustified, absent that kind of evidence, in making any intrusion short of arrest."
>
> *Id.* at 26.

The court in *Terry* recognized that for the purpose of the Fourth Amendment, an "arrest and search" and a "stop" are to be considered "seizures." However, the court recognized that:

> "[N]ot all personal intercourse between policemen and citizens involves "seizures" of persons. Only when the Officer, by means of physical force or show of authority has in some way restrained the liberty of a citizen may we conclude that a "seizure" has occurred."
>
> *Id.* at 19, n. 16.

Mr. Justice Harlan in his concurring opinion specifically recognized that the right of a police officer to address questions to other persons is a right possessed by every citizen, co-existing with the *equal* right of the

person addressed to ignore his interrogator and walk away. 392 U.S., supra, at 32,33. Further, in the concurring opinion of Mr. Justice White, it is stated:

> "There is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets."
>
> *Id.* at 34.

In the case at bar, consistent with the mandate of *Terry v. Ohio, supra*, there is *no testimony* that the Respondent did anything other than to voluntarily cooperate with the officers and voluntarily provide the officers with access and did consent to an examination of his luggage. There is no testimony but that the officers merely approached and contacted a citizen on the street. The Florida Court's rule under the guise of the United States Constitution that police officers have less rights than those of citizens to approach persons on the street is utterly erroneous. *See, also, State v. Frost*, 374 So.2d 593 (Fla. 3d DCA 1979) (Schwartz, J.: expressing an "attraction" to the line of reasoning in *United States v. Coleman*, 450 F.Supp. 433 (E.D. Mich. 1979), which holds that as soon as an officer initially approaches anyone on the street or in a public area it is a "stop" within the meaning of the United States Constitution). In *United States v. Mendenhall*, the court recites preliminary facts virtually identical to those herein as *not tantamount to a seizure:*

> *"We adhere to the view that a person is "seized" only when by means of physical force of a show of authority, his freedom of movement is restrained. Only when such restraint is imposed is there any foundation whatever*

for invoking constitutional safeguards. The purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but "to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals." United States v. Martinez-Fuerte, 428 U.S. 543, 554, 96 S.Ct. 3074, 3081, 49 L.Ed.2d 1116.

"On the facts of this case, no "seizure" of the respondent occurred. [1] The events took place in the public concourse. [2] The agents wore no uniforms and displayed no weapons. [3] They did not summon the respondent to their presence, [4] but instead approached her and identified themselves as federal agents. [5] They requested, but did not demand to see the respondent's identification and ticket. *Such conduct without more, did not amount to an intrusion upon any constitutionally protected interest. The respondent was not seized simply by reason of the fact that the agents approached her, asked her if she would show them her ticket, and identification, and posed to her a few questions. Nor was it enough to establish a seizure that the person asking the questions was a law enforcement official.* See Terry v. Ohio, supra, 392 U.S., at 31, 32-33, 88 S.Ct., at 1885-1885 (Harlan, J., concurring). See also A.L.I., Model Code of Pre-Arraignment Procedure §110.1(1) and commentary at 257-261. In short, nothing in the record suggests that the respondent had any objective reason to believe that she was not free to end the conversation in the concourse and proceed on her way, and for that reason we conclude that the agent's initial approach to her was not a seizure.

"Our conclusion that no seizure occurred is not affected by the fact that the respondent was not expressly told by the agents that she was free to decline to cooperate

with their inquiry, for the voluntariness of her responses do not depend upon her having been so informed. See Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854. *We also reject the argument that the only inference to be drawn from the fact that the respondent acted in a manner so contrary to her self-interest is that she was compelled to answer the agents's questions.* It may happen that a person makes statements to law enforcement officials that he later regrets, but the issue in such cases is not whether the statement was self-protecteive, but rather whether it was made voluntarily.

"The Court's decision last Term in Brown v. Texas. 443 U.S. 47, 99 S.Ct. 2637, 61 L.Ed. 2d 357, *on which the respondent relies, is not apposite.* It could not have been plainer under the circumstances there presented that Brown was forcibly detained by the officers. *In that case, two police officers approached Brown in an alley, and asked him to identify himself and to explain his reason for being there. Brown "refused to identify himself and angrily asserted that the officers had no right to stop him,"* id., at 49, 99 S.Ct., at 2639. *UP TO THIS POINT THERE WAS NO SEIZURE.* But after continuing to protest, the officer's power to interrogate him, Brown was first frisked, and then arrested for violation of a state statute making it a criminal offense for a person to refuse to give his name and address to an officer 'who has lawfully stopped him and requested the information.' " [Emphasis added].

100 S.Ct. at 1877-1878.

In the case at bar, *as in Mendenhall,* the events herein 1) took place upon a public concourse; 2) the

officers wore no uniforms and displayed no weapons; 3) the officers did not summon the defendant; 4) but instead the officers approached him and identified themselves; 5) requested but did not demand the Defendant's identification and ticket and 6) the officer's posed a few questions, *the primary of which was the bizarre conduct of the Defendant at the mere sight of the officers.* These circumstances do *not* amount to a "stop" within the meaning of the United States Constitution. *Terry v. Ohio; United States v. Mendenhall; see also, United States v. Fry,* 622 F.2d 1218 (5th Cir. 1980); *United States v. Elmore,* 595 F.2d 1036 (5th Cir. 1979)[1].

Furthermore, that the Defendant silently acquiesced in response to a suggestion by a co-defendant that he let the officers look in the bag is also without constitutional significance. As this Court explained in *Mendenhall:*

> "The question whether the respondent's consent to accompany the agents was in fact voluntary or was the product of duress or coercion, express or implied, is to be determined by the totality of all the circumstances. Schneckloth v. Bustamonte, 412 U.S. 218, 227, 93 S.Ct. 2041, 2047, 36 L.Ed.2d 854, and is a matter which the government has the burden of proving.

---

[1]In a rather strongly worded opinion, the Florida Third District Court of Appeal in *Frost* has *rejected* the views of the Fifth Circuit Court in *Elmore* as to the application of the United States Constitution to airport transactions. *See, also, Royer v. State,* 389 So.2d 1007 (Fla. 3d DCA 1980) (*en banc,* taking the position that *Reid v. Georgia,* U.S. , 100 S.Ct. 2752 (1980) is contrary to *Mendenhall* and that under *Reid* all "profile" transactions are unreasonable under the Fourth Amendment no matter what the actual observed facts are).

> Id., at 222, 93 S.Ct., at 2045, citing Bumper v. North Carolina, 391 U.S. 543, 548 88 S.Ct. 1788, 1791, 20 L.Ed.2d 797. *The respondent herself did not testify at the hearing. The Government's evidence showed that the respondent was not told that she had to go to the office, but was simply asked if she would accompany the officers. There were neither threats nor any show of force. The respondent had been questioned only briefly, and her ticket and identification were returned to her before she was asked to accompany the officers." [Emphasis added].*
>
> *Id.* at 1879.

As in *Mendenhall*, in the case at bar, the State's evidence was *unrefuted*. The Defendant did *not* testify. The only evidence was that the officers *asked* if he would permit them to look in the bag. That the State is somehow responsible for the urgings of the Defendant's partner-in-crime, who suggested he let the officers look, is a travesty of justice and a gross misreading of the requirements of the United States Constitution. See, *Schneckloth*, *Mendenhall*. Furthermore, as this Court noted in *Mendenhall*, there is no requirement under the Constitution that the Defendant be given some sort of Miranda-like warning prior to a valid consent. *See, also, State v. Wise*, 356 So.2d 920 (Fla. 2d DCA 1978). The Florida courts reading of the United States Constitution to the contrary, is utterly erroneous.

Finally, the Florida courts absolute rejection to the facts herein as *not* amounting to articulable suspicion within the meaning of the Fourth Amendment is utterly erroneous. The failure of the Florida courts to properly

apply this Court's recent decisions in *Reid* and *Mendenhall* is emblematic of their failure to properly apply *Terry v. Ohio*, in the airport context. *See*, *Royer v. State*, 389 So.2d 1007 (Fla. 3d DCA 1980)(discussed at footnote 1, *supra*). Where the officers are suspicious of an individual because of the profile characteristics, they may conduct a valid investigatory stop when they are "able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion." *United States v. Pope*, 561 F.2d 663, 667 (6th Cir. 1977) *citing Terry v. Ohio*, 392 U.S. 1 at 27 (1968); *Mendenhall*. The officers herein did not stop the Defendant and his associates until they had plainly observed conduct which furnished "reasonable suspicion." In the officer's initial observations, the Defendant and his companions were acting peculiarly. When Blanco made eye contact with McGee on the escalator, this caused Blanco to whisper to Ramirez, who immediately turned to look at the officers. As the three men exited the escalator, Blanco turned and told the Defendant, "Let's get out of here." When the Defendant stopped, Blanco repeated, "Get out of here[,]" causing the Defendant to turn, with suitcases in hand, and look at McGee. The Defendant then started trying to leave the area by scrambling around like the proverbial headless chicken. All of this activity subsided when the Defendant ran back in front of McGee, looked him square in the face, and stated, "Oh, shit." That this behavior furnished the articulable facts necessary to create reasonable suspicion for an investigative stop cannot seriously be gainsaid. Indeed the State submits that the false identity by the Defendant's companion when asked who he was, together with the Defendant's falsehood about whether or not he had a key, only

substantiated the experienced observations of these narcotics officers.

Along each carefully defined step, from initial observation to investigative stop, the officers' conduct was completely in compliance with the applicable legal requirements. *See, United States v. Vasquez-Santiago,* 601 F.2d 1069 (2d Cir. 1979). The meshing of practical police considerations and Fourth Amendment theory is stated by this Court in *Delaware v. Prouse,* U.S. , 99 S.Ct. 1391, 1396 (1979):

> "The essential purpose of the proscriptions in the Fourth Amendment is to impose a standard of "reasonableness" upon the exercise of discretion by government officials, including law enforcement agents, in order " 'to safeguard the privacy and security of individuals against arbitrary invasio[n] . . . ' " Thus, the permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests. Implemented in this manner, the reasonableness standard usually requires, at a minimum, that the facts upon which an intrusion is based by capable of measurement against 'an objective standard,' whether this be probable cause or a less stringent test."
>
> [Citations and footnotes omitted].

See, also, United States v. Price, 599 F.2d 494, 500 (2d Cir. 1979); *United States v. Garcia,* 450 F.Supp. 1020

(E.D.N.Y. 1978). Similarly, in *Adams v. Williams*, 407 U.S. 143 (1972), this Court explained:

> "The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, Terry recognizes that it may be the essence of good police work to adopt an intermediate response. See id., at 23, 88 S.Ct., at 1881. A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time. [citations omitted]".
>
> *Id.*, at 145-146.

The Florida courts under the guise of the Fourth Amendment have abrogated the properly application of the Fourth Amendment explained by both *Terry v. Ohio* and *Adams v. Williams*. The Florida courts, in applying the Fourth Amendment to the airport context herein, have failed utterly to apply the balancing test explained by this Court in *Delaware v. Prouse*, and as exemplified in *Mendenhall*. *See, also, United States v. Williams*, 622 F.2d 80 (5th Cir. 1980), *en banc*. The officers herein simply responded in good faith to the obvious circumstances, which they observed as trained narcotics investigators. The application of the exclusionary rule to the good faith actions of these officers is nonsensical and contrary to any intended purpose under the United

States Constitution. *See, United States v. Williams, supra; see also, Stone v. Powell*, 428 U.S. 465, 496-516 (1976) (Burger, J. concurring). Where the exclusionary rule has served its purpose it should not be extended now such that all it serves to do is to frustrate the interdiction of narcotics traffic. *See, Stone v. Powell; Williams, supra.*

CONCLUSION

The officers herein were in good faith and therefore the cocaine should *not* have been suppressed where its suppression only serves to frustrate the interdiction of chronic narcotics traffic. *See, United States v. Williams, supra.* Illicit narcotics traffic is a insidious cancer eating at the very fabric of our society. It is clear that narcotics traffic presents a clear and present danger to the underlying fabric of this nation. Certainly, illicit narcotics traffic has an embarrassing and substantial impact *when the notoriety of MIAMI as a drug terminal is judicially acknowledged in the Supreme Court of the United States. See,* 100 S.Ct. at 1881 (Powell, Burger and Blackmun, J.J., *concurring*). The "serbonian bog" of the exclusionary rule should not be extended to the present circumstance. *See, Stone v. Powell; United States v. Williams.*

The failure of the Florida courts herein to even consider a balancing test, patently exceeds the bounds of the United States Constitution. In view of the circumstances of the Florida Courts opinion and in view of *Mendenhall* and *Reid,* this Court has jurisdiction and should take jurisdiction over this matter of compelling national importance.

RESPECTFULLY SUBMITTED, on this _____ day of December, 1980, at Miami, Dade County, Florida.

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